IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21474 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAHLADBHAI MURARILAL & CO - Petitioner(s)
Versus
UITED INDIA INSURANCE CO LTD & 1 - Respondent(s)

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Appearance :
MR KISHOR M PAUL for Petitioner(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 1,
MS AMEE YAJNIK for Respondent(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 14/12/2006

ORAL JUDGMENT

1. By instant petition under Article 227 of the Constitution of India, petitioner / original plaintiff challenges the order dated 13.4.2005 rendered below application exh. 153 in Special Civil Suit no. 19 of 1989 by the learned 2nd Joint Civil Judge (SD), Rajkot, by which

application filed by the petitioner under Order VI Rule 17 of the Code of Civil Procedure ("the Code" for short), seeking amendment in the Plaint has been rejected.

2. Having heard Mr. Kishor M. Paul, learned advocate of the petitioner and Ms. Amee Yajnik, learned advocate for respondent no.1 – United India Insurance Company Limited and a perusal of the impugned order and also the statutory provisions contained under Order VI Rule 17 of the Code and more particularly when the trial of the suit has not commenced, therefore, to do the substantial justice between the parties, according to this Court the amendment sought for by the plaintiff in paragraph 3 of the application exh. 153 deserves to be allowed by accepting this petition.

3. For the foregoing reasons, the petition succeeds and accordingly it is allowed. Impugned order dated 13.4.2005 rendered below application exh. 153 in Special Civil Suit no. 19 of 1989 is quashed and set aside, result of which is that application exh. 153 in Special Civil Suit no. 19 of 1989 is allowed. Petitioner is directed to carry out the amendment in the main Suit in terms of paragraph 3 of the application exh. 153. Rule is made absolute with no order as to costs.

(A.M.Kapadia,J)

Jayanti*